IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

CMA.No. 122 of 2002()

OS.335/1999 of III ADDL.SUB COURT, KOZHIKODE
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APPELLANT: PETITIONER/PLAINTIFF

T.P.NANDAKUMAR, S/O.DAMODHARAN NAIR,
AGED 39 YEARS, CHIEF EDITOR, "CRIME",
SURABI, AZCHAVATTOM, VALAYANAD AMSOM,
KOZHIKODE TALUK.

BY ADV. SRI.K.RAMAKUMAR
SMT.SARITHA DAVID CHUNKATH

RESPONDENTS: DEFENDANT
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1. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, THIRUVANANTHAPURAM, KERALA.

2. THE DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM, KERALA.

3. A.V.GEORGE, S/O.NOT KNOWN,
AGE ABOUT 43 YEARS, ASSISTANT COMMISSIONER OF
POLICE, KOZHIKODE.

4. GEORGE, SUB-INSPECTOR OF POLICE,
KASABA POLICE STATION, KOZHIKODE.

5. SOBHANA GEORGE, W/O.ISSAC GEORGE,
M.L.A.KOCHUAZHIKKAKATTU, ANGADIKKAL P.O.,
PUTHANKAVU, CHEGANNUR, KERALA.

BY ADV. SRI.DINESH R.SHENOY
SRI.K.J.SEBASTIAN

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON 8/6/2007, DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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appellant.

3. It is seen from the order that no oral evidence has been adduced by the plaintiff/appellant in support of the application filed under Order IX Rule 9 C.P.C. The court below found that there are no proper pleadings or any evidence indicating that the applicant was prevented by any sufficient cause from appearing before the court when the case was taken up for trial in the list. It was further found that the mere pendency of a connected matter is not a sufficient cause as contemplated under Order IX Rule 9 C.P.C.

4. It is contended by the counsel for the appellant that the approach made by the court below is not correct and at any rate, the court below should have found that there was sufficient cause for the non appearance of the plaintiff on the date of trial. This is a case where the suit was dismissed as there was no evidence on the part of the plaintiff and the plaintiff did not enter the box in support of the plaint claim. Therefore, obviously the court below adopted the procedure prescribed under Rule 8 of Order IX C.P.C. and dismissed the suit. Rule 9(1) of Order IX provides as follows:

> "9(1) Where a suit is wholly partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set aside the dismissal and if he satisfies the court that there was sufficient cause for his non appearance when the suit was called for hearing, the court shall make an order setting aside the

dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit."

Hence, it is incumbent on the appellant to satisfy the court that there was sufficient cause for his non-appearance when the suit was taken up for hearing. It is evident that the appellant did not adduce any evidence in support of I.A. No.4362/2001 also. No documents were also produced in support of the application. Therefore, it is a case where the appellant has failed to show any sufficient cause to justify the non appearance before the court when the suit was taken up for hearing. As the burden was on the appellant to prove that there was sufficient cause for his non appearance and as the same has not been discharged to the satisfaction of the court below, the view taken by the court is perfectly justified and the order impugned does not suffer from any error. The court below has only acted within its jurisdiction in dismissing I.A. No.4362/2001.

Hence, the appeal is dismissed without any order as to costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/

Kurian Joseph &

T.R. Ramachandran Nair, JJ.

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C.M.A.NO.122 OF 2002

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JUDGMENT

June, 2007.